



## MINUTES

**MTC Income and Franchise Tax Subcommittee Teleconference  
Wednesday, April 14, 2004  
3:30 p.m. to 4:45 p.m. (Eastern)**

<b>Name</b>	<b>State or Affiliation</b>
Jennifer Hays, Chair Subcomm.	KY
Ted Spangler, Chair Comm.	ID
Dick McFarlane	ID
Jeff Sherman	OH
Charlie Rhilinger	OH
Fred Nicely	OH
Bill Feldman	OH
Janielle Lipscomb	OR
Eric Smith	OR
Paul Guthrie	OR
Gene Walborn	MT
Lennie Collins	NC
Mary Loftsgard	ND
Linda Palmer	NM
Jerry Oxford	TX
Kim Ferrell	UT
Frank Hales	UT
Pious Dhattassery	Washington DC
Ferdinand Hogroian	PWC
Jamie Yesnowitz	Deloitte and Touche
<b>MTC Staff and Consultants</b>	
Elliot Dubin	
Frank Katz	
Roxanne Bland	
Shirley Sicilian	

**I. Welcome and Introductions** – Jennifer welcomed everyone.

**II. Public Comment Period** None offered

**III. Review, Discuss and Amend/Approve Policy Goals, Work Objectives and Timelines for Proposed Uniform Regulation for Apportionment of Telecommunication and Similar Service Income**

We don't have exact date for receipt of Industry White Paper. We will distribute it as soon as we get it in June. The latest draft and industry's input will be discussed at the July meeting and we will make further timeline adjustments from there.

Ted moved approval of time line. Seconded by Gene, passed unanimously.

#### **IV. Walk Through Draft 3 - Proposed Uniform Regulation for Apportionment of Telecommunication and Similar Service Income**

Shirley gave overview of changes, which were intended to incorporate changes proposed in the March meeting. Title reflects change from rule for industry to rule for particular types of service and reflects the broader sense of telecommunications services. Interstate stricken from title as it was misleading and inaccurate.

Definitions changes; add "or similar" as a tag after all "telecommunications"; clarification of "communications", "telecommunications", and "telecommunications services" so they flow better and avoid repetitions. Service address removed word "charged" to get away from "billing address" concept. Added definition of "network access service."

Apportionment and allocation section added language in (3)B to clarify the mathematics. Section 5 Sales Factor Numerators – A service, not industry based; adds "or similar" where appropriate; C added cellular; E & F added "or similar"; G clarification of apportionment on network access.

Question on first paragraph and paragraph 5 - Are we referring to services that are taxable? Or is it the income that is taxable? Problem is that the verb is wrong. In both paragraphs change "are taxable" to "is subject to tax".

We base apportionment on being subject to tax in another "state." Do we want to say "jurisdiction"? Like foreign countries? Does that impact worldwide combined states? Ted points out that UDIPTA defines state to include foreign jurisdictions. That should cover it here. Query whether we have defined state in the allocation and apportionment regulations.

Paragraphs (3)A and (5) say within and without the state. Should these be consistent? Yes, and 3A needs to be changed to focus on the income, not taxpayer, and needs to refer to "person", not "corporation."

Shirley explained changes to (2) B and C

Information services. It includes stuff we want to include such as VOIP. Under North American Industrial Classification System (NAICS) code, telecommunications is under information services. Satellite Radio added because the industry is looking for consistency, much like MTSA. Paul Guthrie asks is there any thought in discussing apportionment for companies that own a license for telecommunications services in an

area but sublicenses someone else to provide the actual service. Shirley points out that the proposal deals only with services, not the sales of intangibles. It would seem that these kind of licenses would be localized to a single state and that allocation of the income should be straightforward. We might consider adding a paragraph that says that income from a license to provide service in a locale is allocable to state of the locale.

Outerjurisdictional property. Ohio asks are we talking about 3 miles or 12 miles or 200 miles. This simply depends upon what jurisdiction a state claims. We will check whether there is any realistic possibility of a state claiming an unusual or unacceptably wide area.

Jeff Sherman suggests revisions in the “service address” definition”. In (iii) we might add to “not known” impractical to know. “Reasonably determinable” may be the best language.

Add “respectively” as the penultimate word in (3)B.

Move (5)C to after (5)F.

In (5)A third line, add “electromagnetic transmission of” before communication. In second line make service and services consistent.

## **V. Review, Discuss and Amend/Approve Policy Goals and Criteria for Evaluating Alternative Proposed Uniform Regulations for Apportionment of Telecommunication and Similar Service Income**

Jennifer suggests we should have consistent standards for evaluating proposals, both from the Committee and from Industry. Shirley has produced a list of ten criteria. They include Administrative (1), Policy (2-9), and practical (fiscal)(10). Ted moved adopting goals and criteria, seconded by Utah, it passed unanimously.

Ted noted that these goals and criteria look to be valuable for application to other uniformity proposals.

## **VI. Next Steps**

Shirley will take all the comments and produce Draft No. 4, which she will deliver fairly soon. We will hold off discussion of the new draft since it does not have significant substantive changes until July meeting when we will have the benefit of industry input.

## **VII. Adjourn at 2:45**